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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

File Law 1  
Wyle

**FILE: S-187521**

**DATE: March 4, 1977**

**MATTER OF: Kay and Associates, Incorporated**

**DIGEST:**

1. Determination that proposal is technically unacceptable is matter primarily within discretion of procuring agency and will not be questioned by GAO in absence of evidence that technical evaluations were without reasonable basis.
2. Competitive advantage gained by offeror as a result of prior performance of Government contract is not improper.

Kay and Associates, Incorporated (Kay), protests the award of a contract to Northrop Worldwide Aircraft Services, Inc. (NWASI), under request for proposals (RFP) No. N00123-76-R-1661 issued by the Naval Regional Procurement Office, Long Beach, California. Kay's protest questions the adequacy of disclosure of the Navy's minimum requirements in the RFP and alleges that the Navy's restrictive interpretation of the RFP's experience requirements permitted only the incumbent, NWASI, to qualify.

The Navy required aircraft maintenance support services for five F-5E and three T-38 military aircraft based at the Navy Fighter Weapons School, Naval Air Station, Miramar. Similar services were required for a sixth F-5E aircraft to be maintained in a "fly away" pipeline status. Section C of the RFP provided in pertinent part as follows:

"The following information shall be included in Volume I [technical portion] of your proposal. The information is required to facilitate an evaluation and comparison of your qualifications with other firms submitting proposals:

\* \* \* \* \*

"Information concerning the experience your firm has had in performance of Government contracts for similar services of the variety and

magnitude set forth in the RFP. This information should include data as to the scope of work required under such contracts, the term of said contracts, number and types of personnel furnished, the procuring agencies contracted with, contract numbers, and any other applicable information. This section must include specific examples of experience in operational maintenance programs as well as examples of the overall organization's experience with the F-5E and T-38 aircraft.

\* \* \* \* \*

"The following is the Government's estimate of the maintenance team composition required to provide the contract services. The technical proposal shall include justification for any proposed deviation hereto:

[Maintenance team composition followed.]"

Section F-82 of the RFP, Description and Specifications, provided that all personnel assigned to this program must be qualified/certified aircraft maintenance supervisors and technicians, who are familiar with Navy Maintenance Procedures and Directives. Of the nine position descriptions stated in the RFP one mentioned the F-5 aircraft and five mentioned the F-5E aircraft specifically, as follows:

"F-8.4 MAINTENANCE FOREMAN/QA FOREMAN

"The Foreman shall possess an extensive background in the field of aircraft maintenance with minimum of ten years experience in direct aircraft maintenance repair, inspection and modification. \* \* \* He should possess a broad working knowledge of the F-5 aircraft.  
\* \* \*

"F-8.5 MATERIAL/SUPPLY FOREMAN

"Must have previous experience to consist of a minimum of ten years base level supply experience of which three years minimum have been in material facilities and stock record

control activities. \* \* \* He must be thoroughly familiar with the peculiarities of the Navy/USAF F-5E/T-38 logistic support plan and procedures in support of the NFWS; have experience in F-5E/T-38 logistic support plan and procedures in support of the NFWS; have experience in F-5E/T-38 Airframe and Engine TCTO Kit procurement, monitoring and issue \* \* \*.

**"F-8.6 INSPECTOR PERIODIC/AIRFRAME GENERAL AND AIRFRAME/CREW CHIEFS**

"Must have a minimum of six years practical experience performing repair, inspection, modification on jet type aircraft. Shall have four years experience on T-38/F-5E aircraft. \* \* \*

**"F-8.7 JET ENGINE TECHNICIAN (ENGINE BUILDUP)**

"Must be qualified on jet engines with six years' experience; intermediate shop and organizational engine flight line experience including troubleshooting, engine conditioning. Must be qualified on F-5E/T-38 engine aircraft run-up. \* \* \* Attendance of F-5E/T-38 familiarization course.

\* \* \* \* \*

**"F-8.9 AVIONICS, RADIO, RADAR, ELECT/INSTRUMENT, SHEET METAL, EGRESS SYSTEMS, WEAPONS SYSTEMS**

"Contractor personnel assigned to the contract should be familiar with the T-38/F-5E type aircraft and U.S. Navy Aircraft Maintenance Program, Procedures and Directives, and must have a minimum experience level of approximately four years. \* \* \*

**"F-8.10 EGRESS TECHNICIAN**

"Should have four years' experience in speciality.  
\* \* \* Attendance of F-5E/T-38 familiarization course.  
\* \* \*

Section D, Evaluation and Award Factors, provides as follows:

"D-1 Award of the contract will be made to the low, responsible offeror in accordance with the minimum technical qualification requirements set forth herein, including the following general areas listed in descending order of importance:

Technical qualifications of key maintenance and management personnel  
Contractor's overall experience in operational maintenance programs and specific F-5E and T-38 experience. \* \* \*

Twelve potential offerors received copies of the RFP and seven offerors submitted timely technical and cost proposals. Technical proposals were forwarded to the Navy Fighter Weapons School (NFWS) for evaluation. Two of those proposals, NWASI's and Dynallectron, Inc.'s, were found to be technically acceptable or capable of being made acceptable. Subsequently, the Navy determined that Dynallectron's cost proposal was incapable of being brought to a level competitive with NWASI's, and after further negotiation, award was made to NWASI.

The five proposals deemed to be fundamentally deficient and not subject to adjustment through negotiation, including Kay's proposal, reflected similar failings in the Navy's view, specifically: (1) most assumed the F-5E to be similar to earlier generations of the aircraft and did not offer the directly relevant experience required; and (2) few offerors demonstrated an acceptable comprehension of the intensity of flight operations to be supported.

Kay contends that only the NFWS and the incumbent really understood the contract requirements because the NFWS considered any proposal not listing personnel specifically experienced a F-5E aircraft to be unacceptable. Further, since no margin for "learning curve" effects was acceptable, only the F-5E prime contractor or one of its subsidiaries could qualify. Kay concludes that this procurement was not competitive.

The Navy reports that the F-5E is significantly different from other members of the F-5 family (e.g., its engine, J-85-GE-21, is not found in other aircraft) and maintenance experience on another aircraft would be inapplicable to the F-5E. Further, since the NFWS mission requires multiple daily sorties by all aircraft in the squadron, a high premium is placed on quick turn-around maintenance efforts and, therefore, no margin exists for "learning curve" experience.

Our Office has consistently held that the contracting agencies have the primary responsibility for drafting specifications which reflect the minimum needs of the Government, and we are not required to object in the absence of evidence of lack of a reasonable basis. See, e.g., Gardner Machinery Corporation, B-185418, September 15, 1976, 76-2 CPD 245. Further it is well settled that "an offeror must demonstrate affirmatively the merits of its proposal," Kinton Corporation, B-183105, June 16, 1975, 75-1 CPD 365, and that it runs the risk of proposal rejection if it fails to do so clearly. See Programming Methods, GTE Information Systems, Inc., B-181845, December 12, 1974, 74-2 CPD 331. Where an offeror's proposal is so technically deficient and thus is not within the competitive range, there is no obligation to hold discussions to improve the proposal. Julia Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232; Essex Corporation, B-182595, April 23, 1975, 75-1 CPD 255.

The determination that Kay's proposal was technically unacceptable is a matter primarily within the discretion of the procuring agency and will not be questioned by our Office in the absence of evidence which would justify our Office in concluding that the technical evaluations were without a reasonable basis. The record in this case is devoid of any such evidence and Kay does not question the technical evaluation; therefore, we find no reason to question the award in this regard. See Donald N. Humphries & Associates, 55 Comp. Gen. 432 (1975), 75-2 CPD 275; Continental Electronics Corp., B-183891, June 23, 1976, 76-1 CPD 399.

Furthermore, we have recognized that a firm may enjoy a competitive advantage by virtue of its incumbency or its own particular circumstances and there is no requirement for equalizing competition by taking into consideration these types of advantages. Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. Since it appears that NWASI was not given preferential treatment in the competition, Kay has no basis to object merely because of its advantage as the existing source. See Birdsboro Corporation, B-184691, September 8, 1976, 76-2 CPD 226.

Accordingly, Kay's protest is denied. However, by letter of today, we are recommending to the Secretary of the Navy that in future procurements where the Navy's minimum needs require maintenance expertise on a particular aircraft, and absent such experience a technical proposal will not be considered within the

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competitive range, as was the case here, sound procurement practice requires that the RFP clearly so advise potential offerors.

*Phyllis*  
Acting Comptroller General  
of the United States